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November 18, 2021

VIA ONLINE PORTAL

Larry Gottesman
National Freedom of Information Officer
Environmental Protection Agency
2822T
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: FOIA Request

Dear Mr. Gottesman:

This is a request on behalf of The James Madison Project (“JMP”) and Michael Coren (“Mr. Coren”)(hereinafter referred to collectively as “the Requesters”) under the Freedom of Information Act, 5 U.S.C. § 552, *et seq.*

The issue of aviation gasoline (“avgas”) and the potential public health risks associated with emissions of avgas from airplanes remains an issue of concern and interest at the Environmental Protection Agency (“EPA”). <https://www.faa.gov/about/initiatives/avgas/> (last accessed November 13, 2021). In 2006, Friends of the Earth filed a petition with the EPA requesting the agency conclude, pursuant to Section 231 of the Clean Air Act, that lead emissions from general aviation aircraft cause or contribute to air pollution that may reasonably be anticipated to endanger public health (also known as an “endangerment finding”). <https://www.govinfo.gov/content/pkg/FR-2007-11-16/pdf/E7-22456.pdf> (last accessed November 13, 2021). In 2012, the EPA responded to that petition by noting its final determination would likely not be reached until 2015. <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100F3YS.PDF?Dockey=P100F3YS.PDF> (last accessed November 13, 2021). To date, the EPA has not issued a final determination. A renewed petition was submitted to the EPA by Friends of the Earth in August 2021. https://earthjustice.org/sites/default/files/files/2021.08.23_-_leaded_avgas_petition_final_with_exhibits.pdf (last accessed November 15, 2021).

The Requesters seek copies of records created, received and/or maintained by the Environmental Protection Agency (“EPA”), including cross-references. Specifically, the Requesters are seeking:

“Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives.”

James Madison, 1822

- 1) Any documentation memorializing final, non-draft “endangerment findings” resulting from the Friends of the Earth petition or, more generally, with respect to the threat to public health from avgas lead emissions;
- 2) To the extent it is not encompassed by category #1, any documentation memorializing factual and/or legal findings regarding the extent to which lead emissions from aviation aircraft pose a risk to the public health;
- 3) To the extent it is not encompassed by category #1, any documentation memorializing final policy or legal analyses addressing the extent to which the EPA should issue an endangerment finding in response to the Friends of the Earth petition; and
- 4) To the extent it is not encompassed by categories #1-3, any medical or science research relied upon by the EPA in evaluating the extent to which an “endangerment finding” in response to the Friends of the Earth petition.

The EPA should ensure that its search for responsive records encompasses Government civilian employees, detailees, political appointees, Constitutional officers, and contract staff. The scope of the searches should include, but not be limited to, e-mail communications on unclassified and classified systems, as well as records stored on individual hard drives and/or shared drives. Searches should also encompass any official communications sent using either Government-issued phones or personal mobile devices upon which Government officials relied in any form for conducting official business, as well as any personal computers upon which Government officials relied in any form for conducting official business.

EPA can limit the timeframe of its searches from January 1, 2006, up until the date upon which EPA begins conducting searches for responsive records. The scope of the searches should not be limited to EPA-originated records and should be construed to include records that are currently in the possession of a U.S. Government contractor for purposes of records management.

The Requesters are pre-emptively waiving any objection to the redaction of the names of any U.S. Government officials below a GS-14 position or whom otherwise were not acting in a supervisory position. The Requesters similarly waive any objection to redactions of the names of any U.S. Government contractors in a position of authority similar to that of a GS-13 series civilian employee or below.

In terms of all other third parties who work or worked for the U.S. Government and whose names appear in records responsive to this request, the Requesters submits that the privacy interests of those individuals have been diminished by virtue of their involvement in one or more of the U.S. Government functions described above as falling within the scope of this request. There is a recognized inverse relationship between the position of authority that a government employee holds and the strength of that employee’s privacy interests. See Stern v. FBI, 737 F.2d

84, 92 (D.C. Cir. 1984); Jefferson v. Dep't of Justice, 2003 U.S. Dist. LEXIS 26782, *11 (D.D.C. Nov. 14, 2003); see also Perlman v. Dep't of Justice, 312 F.3d 100, 107-109 (2d. Cir. 2002)(setting forth five factors to consider in weighing government employee's privacy interests against public interest in disclosure, including employee's rank and whether information sheds light on a government activity).

The work performed by these third parties was part of their official responsibilities on behalf of the U.S. Government and was not of a personal nature. They served in a position of trust and authority to, among other things, evaluate the concerns raised by Friends of the Earth and determine whether an "endangerment finding" was warranted. Given that responsive records memorializing the work they performed will shed light on government activity, it would be reasonable to conclude that the relevant third parties' respective (and diminished) privacy interests are outweighed by the public interest in disclosure of the information indexed to their name.

We are requesting a waiver of or, at a minimum, a reduction in fees. The Requesters qualify – in their own respective rights – for designation as representatives of the news media.

JMP is a non-partisan organization dedicating to promoting government accountability and the reduction of secrecy and has a proven track record of coordinating the publication of original works in reliance upon FOIA documentation. See e.g., <https://www.nbcnews.com/politics/politics-news/u-s-ethics-office-struggled-gain-access-trump-team-emails-n704146> (last accessed November 10, 2021); <https://www.thedailybeast.com/border-patrol-ordered-to-block-congress-men-during-travel-ban> (last accessed November 10, 2021). Mr. Coren is a Senior Reporter for Quartz. <https://qz.com/author/mcorenqz/> (last accessed November 13, 2021).

The Requesters can disseminate information on a wide scale and intend to use information obtained through this FOIA request in original works, particularly through news articles written by Mr. Coren. According to 5 U.S.C. § 552(a)(4)(A)(ii),

the term 'a representative of the news media' means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

The Requesters can demonstrate their intent and ability to publish or otherwise disseminate information to the public. See Nat'l Security Archive v. Dep't of Defense, 880 F.2d 1381, 1386 (D.C. Cir. 1989). Mr. Coren maintains the ability to publish articles explaining the content of any responsive records received as part of this request.

Furthermore, it is axiomatic that disclosure of responsive records will significantly contribute to the public's understanding of government operations and activities. This request seeks records regarding a petition for a statutory determination that has been pending for *fifteen years*, and

regarding which the EPA has on more than one occasion sought additional time or made assurances it would substantively address, to no avail. There is a real and nontrivial public need for clarification from the EPA regarding the threat to public health from avgas, https://www.salon.com/2021/08/27/the-epa-may-finally-reckon-with-aviations-dirty-secret-leaded-fuel_partner-2/ (last accessed November 15, 2021); <https://www.avweb.com/aviation-news/gami-awarded-long-awaited-stc-for-unleaded-100-octane-avgas/> (last accessed November 15, 2021), and the EPA's failure to substantively respond in any form raises concerns regarding the seriousness with which the agency views the matter. Disclosure of records outlining what has occurred behind the scenes will improve the public's understanding of why this matter has been delayed for so many years, and if that delay is due to legitimate disputes over medical and scientific questions (as opposed to political concerns).

In the event that fees are ultimately assessed, do not incur expenses beyond \$25 without first contacting our office for authorization.

If you deny all or part of this request, please cite the specific exemptions you believe justify your refusal to release the information or permit the review and notify us of your appeal procedures available under the law. We request that any documents or records produced in response to this request be provided in electronic (soft-copy) form wherever possible. Acceptable formats are .pdf, .jpg, .gif, .tif. Please provide soft-copy records by email or on a CD if email is not feasible. However, the Requesters do not agree to pay an additional fee to receive records on a CD, and in the instance that such a fee is required, the Requesters will accept a paper copy of responsive records.

Your cooperation in this matter would be appreciated. If you wish to discuss this request, please do not hesitate to contact me at (202) 907-7945 or via e-mail at Brad@MarkZaid.com.

Sincerely,

/s/

Bradley P. Moss